

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, ET AL.,

Plaintiffs,

v.

AMERICAN AIRLINES GROUP INC. and
JETBLUE AIRWAYS CORPORATION,

Defendants.

Civil Action No. 1:21-cv-11558-LTS

**ASSENTED-TO MOTION TO SEAL EXHIBIT A TO THE DECLARATION OF
ELISE M. NELSON IN SUPPORT OF DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION *IN LIMINE* NO. 2 TO EXCLUDE EVIDENCE OF
DEFENDANTS' ALLEGED CARVE-OUT ROUTES**

Pursuant to Local Rule 7.2 and the Stipulated Protective Order in this matter (ECF No. 99), Defendants American Airlines Group Inc. ("American") and JetBlue Airways Corporation ("JetBlue," and collectively "Defendants") respectfully move the Court for an order of impoundment as to Exhibit A to the Declaration of Elise M. Nelson in Support of Defendants' Opposition to Plaintiffs' Motion *in Limine* No. 2 to Exclude Evidence of Defendants' Alleged Carve-out Routes ("Exhibit A") – filed at ECF No. 158-1.

Exhibit A, a true and correct copy of the Northeast Alliance Agreement ("NEA Agreement") between American and JetBlue, contains information Defendants have designated as Highly Confidential under the terms of the Stipulated Protected Order entered in this action. ECF No. 99. Accordingly, and pursuant to the Stipulated Protective Order, Defendants respectfully request that the Court seal limited portions of the exhibit to protect this confidential information. Defendants have prepared a redacted version of the NEA Agreement, attached hereto as Exhibit A, which removes only the relevant confidential material, and which Defendants seek to file on the public

docket at ECF No. 158-1. Defendants further request that the sealed version of Exhibit A remain impounded under further order of the court.

ARGUMENT

Courts recognize that “the right to inspect and copy judicial records is not absolute,” and non-public, commercially sensitive documents may be protected from public disclosure. *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978) (“Every court has supervisory power over its own records and files[.]”). Pursuant to Federal Rule of Civil Procedure 26(c), a party may file a document under seal when “good cause” exists to keep the information confidential. Good cause exists where the moving party demonstrates “the harm that would be sustained if the court did not allow the filing under seal.” *Dunkin Donuts Franchised Rests., LLC v. Agawam Donuts, Inc.*, 2008 WL 427290 at *1 (D. Mass. Feb. 13, 2008) (internal quotations omitted).

It is well-settled that documents revealing “business information that might harm a litigant’s competitive standing” are the type of materials that courts protect because their disclosure can result in injury. *Nixon*, 435 U.S. at 598. Negotiated contract terms constitute paradigmatic trade secrets that, if disclosed, would harm a company’s competitive standing in the market. *See, e.g., In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (holding that contract terms contained in licensing agreement are “the precise sort of information . . . that plainly falls within the definition of ‘trade secrets’”). The NEA Agreement is highly confidential, containing competitively sensitive terms and conditions that, if made public, would significantly harm the competitive standing of American and JetBlue. Courts routinely seal this type of competitively sensitive information. *See, e.g., In re Bank of Am. Home Affordable Modification Program (HAMP) Contract Litig.*, 2012 WL 5239726, at *1 (D. Mass. Oct. 24, 2012) (granting motion for protective order to protect “confidential commercial information about [a bank’s] internal policies and procedures, as well as the internal policies and procedures of its third-party vendor” because material at issue “could unfairly disadvantage [the bank

and its vendor] vis-à-vis their economic competitors”).¹

The NEA Agreement contains sensitive information regarding the Defendants and, in particular, detailed proprietary and competitively sensitive information about the terms of the Northeast Alliance. Disclosing this information to the public would result in serious harm to American and JetBlue.

Finally, Defendants’ request for sealing is narrowly tailored. Defendants seek only to seal limited portions of the NEA Agreement, and likewise seek to file a redacted version of the NEA Agreement on the public docket. This protects Defendants’ confidential information while permitting the public to have the fullest possible access.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court issue an order impounding Exhibit A to the Declaration of Elise M. Nelson in Support of Defendants’ Opposition to Plaintiffs’ Motion *in Limine* No. 2 to Exclude Evidence of Defendants’ Alleged Carve-out Routes, and permitting Defendant to file a redacted version of same on the public docket.

¹ See also, e.g., *Goldenberg v. Indel, Inc.*, 2012 WL 15909, at *3 (D.N.J. Jan. 3, 2012) (granting sealing of “confidential business agreements” that included “sensitive financial information”); *Mars, Inc. v. JCM Am. Corp.*, 2007 WL 496816, at *2–3 (D.N.J. Feb. 13, 2007) (finding a legitimate privacy interest in maintaining the confidentiality of terms to a business agreement that are not available to the public because otherwise the parties to the agreement could lose their future competitive negotiating positions and strategies, causing them to suffer serious injury); *Sprinturf, Inc. v. Sw. Recreational Indus., Inc.*, 216 F.R.D. 320, 324 (E.D. Pa. 2003) (protecting documents containing proprietary information because defendants’ “competitors would be able to exploit this information during negotiations with [their] customers”).

Dated: September 12, 2022

Respectfully submitted,

/s/ Daniel M. Wall

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LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1(a)(2), Defendants hereby certify that they have conferred with counsel for Plaintiffs regarding the relief requested in this motion, and Plaintiffs do not oppose the sealing of this Exhibit for the purposes of this Motion to Seal Exhibit A to the Declaration of Elise M. Nelson in Support of Defendants' Opposition to Plaintiffs' Motion *in Limine* no. 2 to Exclude Evidence of Defendants' Alleged Carve-out Routes. Plaintiffs have stated that they expressly reserve all rights to challenge the confidentiality of this Exhibit at trial.

/s/ Daniel M. Wall
Daniel M. Wall

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, which was filed with the Court through the CM/ECF system, will be sent electronically to all registered participants as identified on the Notice of Electronic Filing.

/s/ Daniel M. Wall
Daniel M. Wall